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इस भाग में भिन्न पृष्ठ संख्या वाली जाती हैं जिससे कि यह अलग संख्याएँ के रूप में
रखा जा सके।

Separate Paging is given to this Part in order that it may be filed as a separate
compilation.

भाग II—खण्ड ३—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) सेवानीय अधिकारियों द्वारा जारी किए गए अविश्वास और अधिसूचनाएँ
Orders and Notifications issued by Central Authorities (other than Administrations of
Union Territories)

भारत निवाचन आयोग

अधिसूचना

मई दिल्ली, १५ जूलाई, 1984

आ. अ. 87 :—लोक प्रतिनिधिस्त अधिनियम, 1951 की भारा 106 के अनुसरण में निवाचन आयोग, 1980 की निर्वाचन अजीि नं. ६ और ९ में दिए गए उक्त न्यायालय, बिहार, पटना की तारीख 25-5-1984 का निर्णय प्रकाशित करता है।

[सं. ८२/बिहार-ल०. सं./६ व ९/८०/८४]

आदेश से,

बीराम सेठी, अवर सचिव

भारत निवाचन आयोग

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 9th July, 1984

O.N. 87.—In pursuance of section 106 of the Representation of the People Act, 1951 the Election Commission

hereby publishes the judgment dated 25th May, 1984 of the High Court of Judicature at Patna election petition Nos. 6 and 9 of 1980.

ELECTION PETITION NOS. 6 AND 9 OF 1980

In the matter of Applications under Sections 80, 80A and 81 of the Representation of the People Act, 1951.

Rajendra Prasad Gupta—Petitioner in Election Petition No. 6 of 1980

Mahadeo Sab —Petitioner in Election Petition No. 9 of 1980

VARSUS

Sri Kamla Mishra Madhukar—Respondent in both the cases

For the Petitioner : Messrs S.N.P. Sharma and Amarendra Kumar Singh.

For the respondent : Messrs Indu Shekhar Pd. Sinha and Girindra Mohan Thakur.

PRESENT:

THE HON'BLE MR. JUSTICE SHIVANUGRAH NARAIN

Shivanugrah Narain, J.—The Petitioners of both these election petitions claim a declaration that the election of

the sole respondent, Sri Kamla Mishra Madhukar, to the House of People from 3, Motihari Parliamentary Constituency, held in 1980 is void. The sole ground on which the election is impugned is that the nomination paper of Sri Jamuna Ram was improperly rejected by the Returning Officer. As the election impugned is the same and the grounds for impugning the election are also the same, these two elections petitions have been heard together and this judgment will govern them both.

2. Election Petition No. 6 of 1980 has been filed by Rajendra Prasad Gupta, an elector in Kesaria Assembly constituency, which was comprised in 3, Motihari Parliamentary Constituency. Mahadeo Sah, a voter in Mohalla Miscott, which falls in Motihari Assembly Constituency, comprised in 3, Motihari Parliamentary Constituency; and who was one of the proposers of Sri Jamuna Ram, is the petitioner in Election Petition No. 9 of 1980. Sri Kamla Mishra Madhukar, a returned candidate, is the sole respondent in both the election petitions.

2A. Admittedly, one Sri Jamuna Ram had along with the respondent and others filed nomination for election to the House of People from 3, Motihari Parliamentary Constituency. Two nomination papers were filed on his behalf. In one of them, which bears the serial number 43 has been marked as Ext. 2 in Election Petition No. 6 of 1980 and Ext. 4 in Election No. 9 of 1980, the proposer was Mahadeo Sah, and in the other which bears the serial number 47 and has been marked as Ext. 2(a) in Election Petition No. 6 of 1980 and Ext. 4(a) in Election Petition No. 9 of 1980, the proposer was Bishwanath Ram. Hereinafter the nomination papers would be described with reference to the Exhibits marks given in Election Petition No. 6 of 1980. Both these nomination papers were filed indec time, but on the date of the scrutiny, namely, on 11-12-1979, the Returning Officer rejected both the nomination papers; Ext. 2, in which the proposer was Mahadeo Sah, on the ground that the proposer's name does not find place in the electoral roll. He has mentioned as Bihar Assembly constituency. The nomination paper Ext. 2(a), in which Bishwanath Ram was the proposer, was rejected as the proposer's constituency has not been mentioned, and also because the age, obviously meaning the age of the candidate, had not been mentioned. As I have already said, the respondent was declared elected, the declaration having been made on 8-1-1980. According to the petitioners, Sri Jamuna Ram was a voter from 12, Motihari Assembly Constituency, which was a part of the aforesaid Parliamentary Constituency and his name was entered in serial No. 14, Part VII of the electoral roll of the said Assembly constituency, and his age as mentioned in the voters' list was 64. Sri Jamuna Ram was a former member of the Bihar Legislative Assembly and possessed all the prescribed conditions for being nominated as a candidate to the Parliament and was not disqualified. According to the petitioner, the two proposers of Jamuna Ram, namely, Mahadeo Sah and Bishwanath Ram were also voters at the aforesaid election from 12 Motihari Assembly Constituency, the name of Mahadeo Sah being at serial No. 458 of Part VI, and that of Bishwanath Ram was at serial No. 9 Part VII of the aforesaid Assembly Constituency which was comprised in the aforesaid Parliamentary Constituency. According to the petitioner, both the nomination papers, which were on the prescribed forms, substantially complied with the provisions of the Representation of the People Act, 1951, and the Rules made therein and the defects in the nomination papers were merely technical defects. The petitioner also alleged that at the time of the presentation of the aforesaid two nomination papers, the Returning Officer scrutinised the two nomination papers, but did not find out any defect therein. At the scrutiny, however, though no objection was raised by any of the candidates or their proposers and the identity of Jamuna Ram and his proposers was not in doubt, the Returning Officer, it is alleged without pointing out the defects silently rejected the two nomination papers of Sri Jamuna Ram, without giving him any opportunity of being heard. The order of rejection of the nomination papers, besides being in violation of the principles of natural justice, was according to the petitioners, contrary to the mandatory provisions of sections 33 and 36 of the Representation of the People Act, 1951. The defects being merely technical, the nomination papers were, improperly rejected.

4. The petitions were resisted by the respondent who maintained that the nomination papers of the petitioners had been rightly rejected, the defects being substantial, and not technical, and that they should have been rejected also on grounds other than the grounds mentioned by the Returning Officer. He asserted that the proposers wilfully neglected to correct the mistakes in the nomination papers and that the proposer did not produce certified copies of the entry of his name in the electoral roll of the Bihar Assembly Constituency. According to the respondent, Election Petition No. 6 of 1980 had been filed by the husband of the defeated Congress candidate Shrimati Prabhawati Gupta, and Mahadeo Sah, the petitioner in the other case, was a mere stooge of Smt. Prabhawati Gupta and her husband and was a mere name-lender, and, therefore Rajendra Prasad Gupta he has no locus standi to impugn the election. His locus standi was also challenged on the ground that he was entered as a voter not only in 18, Kesaria Assembly Constituency, but also in the electoral roll of 206, Patna West Assembly constituency.

5. The respondent filed a petition to amend his written statement also incorporating therein that petitioner Rajendra Pd. Gupta was not ordinarily residing in village Kasaria during the relevant time and that he was ordinarily residing at Patna and, therefore, he was not entitled to be a voter in the constituency to which the present election petition related. That amendment was rejected by order dated 25-2-1983 passed by this Court.

6. The following issues have been framed in Election Petition No. 6 of 1980:—

1. Is the petitioner incompetent to present and prosecute the Election petition No. 6 of 1980 because the name of the petitioner was entered as an elector in the electoral roll of two Assembly Constituencies, namely, 18 Kesaria Assembly Constituency which was comprised in 3 Motihari Parliamentary Constituency and in Patna West Assembly Constituency which was comprised in a different Parliamentary Constituency?
2. Is there any Bihar Assembly Constituency in the State of Bihar ? If so, in which Parliamentary Constituency of the State it is situated and was the candidate's name entered in electoral roll of that Assembly Constituency ?
3. Whether Jamuna Ram, a candidate was a voter from Motihari Assembly Constituency vide serial No. 14, part 7 of 12 Motihari Assembly Constituency, falling in 3, Motihari Parliamentary Constituency or not ?
4. Whether Jamuna Ram, the said candidate was below the age of 25 years on the date of filing his nomination paper or on the date of its scrutiny ?
5. Whether Sri Mahadeo Sah and Sri Bishwanath Ram, the two proposers of Jamuna Ram were voters vide serial No. 458, part 6 and serial No. 9, part No. 7 of 12 Motihari Assembly Constituency, respectively, falling in 3, Motihari Parliamentary Constituency ? If so, whether they were qualified to propose the name of Jamuna Ram ?
6. Whether the nomination papers proposed by Mahadeo Sah and Bishwanath Ram were improperly rejected by the Returning Officer in the impugned election ? If so, is the election of the respondent void ?
7. Is the petitioner entitled to any relief or reliefs ?

7. The following issues have been framed in Election Petition No. 9 of 1980 :

1. Is the election petitioner a stooge of Shri Rajendra Prasad Gupta and has the election petition been filed at the instance of Shri Rajendra Prasad Gupta and, if so, is the election petition not maintainable on this account ?

2. Whether the nomination paper of Shri Jamuna Ram proposed by the petitioner (Mahadeo Sah) and Bishwanath Ram were improperly rejected by the Returning Officer in the impugned election ? If so, is the election of the sole respondent void ?
3. Whether the petitioner and other proposer, namely, Bishwanath Ram had ample opportunity to give correct particulars required by law in their nomination papers and did they deliberately file invalid nomination papers for some ulterior motive ? If so, is the election petitioner estopped from challenging the election ?
4. Whether the petitioner is entitled to any other relief?

8. I shall take up first Election Petition No. 6 of 1980.

Issue No. 1

Election Petition No. 6 of 1980

9. The name of petitioner Rajendra Prasad Gupta is admittedly entered in the electoral roll of 18 Kesaria Assembly Constituency, which was comprised in 3 Motihari Parliamentary Constituency, and also in 206, Patna West Assembly Constituency. Now according to section 81(1) of the Act, any elector has the right to present an election petition calling in question the election for which he is an elector. As it is not disputed that the name of the petitioner is entered in the electoral roll of 18 Kesaria Assembly Constituency, which forms a part of the 3 Motihari Parliamentary Constituency, the election of which is in question, it is manifest, in view of the Explanation to section 81(1) read with section 62 of the Act that the petitioner is an elector. For the reasons given by me in the Order No. 28 dated 25-2-1983, an 'elector' according to the Explanation to Section 81 of the Act, means every person who is for the time being entered in the electoral roll of any constituency, unless it is expressly provided to the contrary by the Act. The Act nowhere provides that a person who is entered in the electoral roll of more than one constituency shall not be regarded as an elector. Section 62 of the Act merely provides that no person shall vote at a general election at more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void. It follows, therefore, that the petitioner is not incompetent to present and prosecute the election petition because his name was entered as an elector in the electoral roll of also Patna West Assembly Constituency which was comprised in a different constituency. Issue No. 1 is, therefore, answered in the negative.

Issue No. 2

10. It is not in dispute that there is a Bihar Assembly constituency in the State of Bihar and that Assembly Constituency is comprehended with the Nalanda Parliamentary Constituency in the State of Bihar. It is also not in dispute that the name of the candidate Jamuna Ram is not entered in the electoral roll of that Assembly Constituency. Issue No. 2 is answered accordingly.

Issue Nos. 3 and 5

11. Certain entries in the electoral roll of 12 Motihari Assembly Constituency for the 1980 election have been exhibited, and Ext. 3(b), an entry in the aforesaid electoral roll, shows that the name of Jamuna Ram, the candidate, was entered in serial No. 14 Para 7 of the said electoral roll. Issue No. 3 must therefore, be answered in the affirmative.

12. Ext. 3 is entry No. 458, in Part 6 of the aforesaid electoral roll. It shows that the name of Sri Mahadeo Sah, the proposer of Jamuna Ram in one of the nomination papers is entered in Serial No. 458 of Part 6 of the aforesaid electoral roll. Similarly, Ext. 3(a) shows that the name of Sri Biswanath Ram, the proposer of Jamuna Ram, in the other nomination paper is entered in serial No. 9 of Part 7 of the aforesaid electoral roll. In face of these entries, it was concluded on behalf of the respondent that Shri

Mahadeo Sah and Sri Biswanath Ram were voters from 12 Motihari Assembly segment of 3 Motihari Parliamentary Constituency, and the first part of Issue No. 5 must, therefore, be answered in the affirmative. In other words, I hold that Sri Mahadeo Sah and Sri Biswanath Ram, the two proposers of Jamuna Ram, were electors in 12 Motihari Assembly constituency, which was a segment of 3 Motihari Parliamentary Constituency. That being so, it follows that both Sri Mahadeo Sah and Sri Biswanath Ram were electors of 3 Motihari Parliamentary Constituency for election from which they had nominated Sri Jamuna Ram as a candidate.

13. Section 33 of the Representation of the People Act, 1951 requires that the nomination paper must be signed by the candidate and by an elector of the constituency as proposer. Being electors of the constituency, both Sri Mahadeo Sah and Sri Biswanath Ram were qualified to propose the name of Jamuna Ram as a candidate for election to the Lok Sabha from 3 Motihari Parliamentary Constituency. Second part of Issue No. 5 must also, therefore, be answered in the affirmative.

Issue No. 4

14. Tulsi Ram (R.W.1) stated in his examination-in-chief that he knew Jamuna Ram, whose nomination paper was rejected in the election which is being impugned by this election petition, since 1938. As he knew Jamuna Ram since 1938, there can be no doubt that according to him, Jamuna Ram was aged at least more than 40 years in 1980 when the nomination papers were filed by him. Jamuna Ram was admittedly by member of the Bihar Assembly Constituency in 1952. There can, therefore, be no doubt that on the date of filing of the nomination papers or on the date of scrutiny, Jamuna Ram was aged more than 25 years. Indeed, this position was not disputed by the learned counsel appearing on behalf of the respondent. I, therefore, hold that on the date of filing of the nomination papers or on the date of scrutiny of the nomination papers, Jamuna Ram was aged more than 25 years. Issue No. 4 must, therefore, be answered in the negative.

Issue No. 6

15. As I have already, stated, two nomination papers Exts. 2 and 2(a) (serial Nos. 43 and 47 respectively) were filed by Jamuna Ram. Mahadeo Sah, the petitioner in Election Petition No. 9 of 1980, is the proposer in Ext. 2 and Bishwanath Ram is the proposer in Ext. 2(a). The two nomination papers are on the prescribed form in Hindi. In the nomination paper Ext. 2, the proposer has mentioned his name in the column meant for his name, and in the column meant for the Parliamentary Constituency, he has mentioned "Motihari", but in the column meant for giving the name of the Assembly Constituency comprised in the aforesaid Parliamentary Constituency in which he is an elector, the proposer Mahadeo Sah has mentioned "Bihar". and in the column meant for giving the part number and the serial number, in which his name occurs in the electoral-roll of the Assembly Constituency, he has mentioned "Part 6" and serial No. 458 respectively and the nomination paper has been signed by him. Therefore, the proposer in the nomination paper Ext. 2 has given his name and has stated that his name occurs in Part 6, Serial No. 458 of the electoral roll of the Assembly Constituency which is comprised in 3 Motihari Parliamentary Constituency. The order of rejection which is recorded on the nomination paper itself runs as follows:—

"Rejected as the proposer's name does not find place in the Electoral Roll—he has mentioned as Bihar Assembly Constituency. The candidate has mentioned."

The order of the Returning Officer, which I have quoted above, is not very clear, but interpreting it reasonably, it means that the Returning Officer rejected the nomination

paper as, according to him, the name of the proposer did not find place in the electoral roll of the constituency for which the election was being held, namely, 3 Motihari Parliamentary Constituency. The other interpretation that it was request because his name did not find place in the electoral roll of the Bihar Assembly Constituency, does not appear reasonable because the nomination paper could not be rejected for that reason, if the name of the proposer was entered and could on the basis of the information furnished in the nomination paper be easily traced in the electoral rolls of the 3 Motihari Parliamentary Constituency. The question is whether the Returning Officer has improperly rejected the aforesaid nomination paper.

16. Section 33 of the Representation of the people Act, 1951, so far as it is relevant, reads:

- "(1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by the proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.
- (4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that no misnomer or inaccurate description of clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

- (5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

Section 34 of the Act requires as a condition for valid nomination a deposit by or behalf of the candidate a certain sum of money. Section 36 of the Act deals with scrutiny of the nomination papers. Sub-section (1) of section 36 authorises the candidates, their election agents, one proposer of each candidate and one other person duly authorised in writing by each candidate to attend at such time and place as the returning officer may appoint for scrutiny of the nomination papers, and the returning officer is enjoined to give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered in accordance with the provisions of section 33. Sub-Sections (2) to 7 of section 36 of the Act run as follows :

- "(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such

summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:—

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :—

Article 84, 102, 173 and 191.

Part II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963); or

- (b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or
- (c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) Nothing contained in clause (b) or clause (c) of sub-section (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control :

Provided that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) For the purpose of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is provided that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950)."

17. Thus the only grounds on which nomination paper may be rejected are those specified in clauses (a), (b) and (c) of sub-section (2). It is common ground that the candidate Jamuna Ram was qualified and not disqualified for being chosen to fill the seat, and it is nobody's case that the signature of the candidate or his proposer on the nomination paper is not genuine. The rejection of the nomination paper can only be based on the ground specified in clause 2(a), namely, that there has been a failure to comply with any of the provisions of section 33 as section 34 is also of the way because it is not urged that the amount requisite under section 34 of the Act had not been deposited.

18. It remains now to consider whether section 33 of the Act has been complied with. It is not in dispute that the nomination paper was delivered to the returning officer at the specified place on or before the last date appointed for filing of the nomination papers and that it is signed by the candidate

Jamuna Ram and by Mahadeo Sah, the proposer who is an elector of the Motihari Assembly constituency. The only requirement of section 33 of the Act is that the nomination paper must be completed in the prescribed form. The form prescribed for filing the nomination paper for election to the house of the People is Form 2A appended to the Conduct of Election Rules, 1961. The nomination paper Ext. 2 is on the prescribed form. So far as the question of its compliance with section 33 of the Act is concerned, it has been completed in the prescribed form. The only defect in completing the nomination paper in the prescribed form admittedly is to the effect that whereas the proposer Mahadeo Sah was entered as an elector in Motihari Assembly constituency comprised within Motihari Parliamentary constituency, in the nomination paper, in the column meant for mentioning the name of the Assembly constituency, he has wrongly mentioned "Bihar", instead of Motihari, though he has correctly mentioned the name of the Parliamentary constituency and also his serial number in the electoral roll and the Part number of the electoral roll.

Now "completed" obviously means "correctly completed" and to the extent that the name of the Assembly constituency has not been correctly filled in, the nomination paper must be held not to have been correctly completed. To that extent there has been a failure to comply with the provisions of section 33 of the Act. But sub-section (4) of section 36, as we have seen, prohibits the Returning Officer from rejecting any nomination paper on the ground of any defect which is not of a substantial character. The question for determination, therefore, is whether the defect in the nomination paper is a defect of a substantial character. The learned counsel for the respondent contends that it is, whereas the learned counsel for the petitioner contends that it is not.

19. The Returning Officer appears to have assumed that according to the averments in the nomination paper, the proposer Mahadeo Sah was an elector in Bihar Assembly Constituency which was not comprised in 3 Motihari Parliamentary Constituency. As a Parliamentary Constituency consists of several Assembly Constituencies of the State in which the Parliamentary Constituency is situate, the reasonable interpretation of the statement in the nomination paper that the name of the petitioner was entered at serial No. 458, Part VI of the Bihar Assembly Constituency comprised in Motihari Parliamentary Constituency was that the word "Bihar" had been used to specify with reference to the State. The Legislative Assembly in a Constituency, of which the name of the petitioner was entered and not the particular, Legislative Assembly Constituency in the State of Bihar in which his name was entered. The proposer had in the nomination paper claimed that the Assembly Constituency in which his name was entered was comprised in the Motihari Parliamentary Constituency, and, therefore, the interpretation that "Bihar" stands for the State of Bihar is a more reasonable interpretation. If that interpretation is, as it should have been adopted the result would be that though the petitioner claimed to have been an elector of Motihari Parliamentary Constituency, he had not specified the Legislative Assembly Constituency in the electoral roll of which he was entered as a voter.

20. The crucial question for determination, therefore, is whether in the facts and circumstances of this case, the omission to specify the name of the Assembly Constituency in which the proposer was entered as a voter is a defect of a substantial character. In order to find out whether the defect is of a substantial character, we must have regard to the purpose of the direction in the form that the nomination paper should contain the name of the Parliamentary Constituency, the name of the Assembly Constituency comprised in the Parliamentary Constituency in which the proposer is a voter and the Part of the electoral roll and the serial number in that Part in which the name of the proposer occurs as a voter. As pointed out by Wanchoo J. (as he then was), speaking for the Supreme Court in Rengilal Choudhury vs. Dahu Rao and others (A.I.R. 1962 Supreme Court 1248), the purpose of the provision is "that the returning officer should be able readily to check that the proposer and the candidate are voters on the electoral roll". As further observed by Wanchoo, J. in Rangilal's case (*supra*), section 33(4) of the Act casts a duty on the Returning Officer to satisfy him-

self that the names and electoral roll numbers of the candidate and his proposer are entered in the electoral roll and gives him the power to permit the removal of any defect in this connection. Therefore, the defect may not be regarded as substantial if on the basis of particulars mentioned in the nomination paper, the Returning Officer would be able readily to trace out the name of the proposer and the candidate in the electoral rolls. In Rangilal's case (*supra*), negating the argument that the failure to give the name of the constituency by the proposer was a substantial defect in the nomination paper, Wanchoo, J. (as he then was) said :

"It seems therefore that in this case the returning officer found no difficulty in tracing the names of the proposer and the candidate in the electoral rolls and that is why no objection was raised before him as to the defect in columns 2 and 3. In the circumstances it must be held that the defect was of an unsubstantial character, and would not result in the rejection of the nomination paper."

20A. Can it be said that in view of the defect in the nomination paper, viz. the absence of the name of the Assembly Constituency, the Returning Officer would not be able readily to trace the name of the proposer in the electoral rolls of 3 Motihari Parliamentary Constituency. In my opinion, the answer to the question must be in the negative. The electoral rolls of 3 Motihari Parliamentary Constituency, in the electoral rolls of which the proposer Mahadeo Sah claimed that his name was entered, consists of the electoral rolls of six Assembly constituencies, namely, 12 Motihari Assembly Constituency, 16 Madhuban Assembly Constituency 17 Pipra Assembly Constituency, 18 Kesaria Assembly Constituency, 19 Harsidhi Assembly Constituency and 20 Govindganj Assembly Constituency vide paragraph 2 of the election petition, the averments in which are admitted in the written statement vide paragraph 11. If the Returning Officer had looked into serial Nos. 458 of Part VI of the electoral rolls of all the six Assembly Constituency aforesaid, he would have been able to readily trace the name of the proposer Mahadeo Sah entered at serial No. 458, Part VI of the Motihari Assembly Constituency. The nomination paper does mention that the name of Mahadeo Sah is entered at serial No. 458, Part VI of the electoral roll. As the name of the Assembly Constituency was not given, the only trouble caused to the Returning Officer in tracing out the name of Mahadeo Sah in the electoral roll of the Parliamentary Constituency would have been that he may have had to look into utmost six entries, namely serial Nos. 458, Part VI of all the six Assembly Constituencies before he could locate the name of the proposer Mahadeo Sah. It could well have been that the Returning Officer may have started with the electoral roll of Motihari Assembly Constituency in which case he would have been able to locate the name of the proposer in the electoral roll at the first attempt. Can it be said that because the Returning Officer may have had to take the pains of looking into utmost six entries in the electoral rolls all of which were before him, as they were all comprised in the Parliamentary Constituency of which he was the Returning Officer, it must be held that the Returning Officer would not have been able readily to locate the name of the proposer in the electoral rolls? In my opinion, it cannot be so said. It is true that he should be able to trace the name of the proposer in the electoral roll without much difficulty, that is, without any laborious search in the electoral roll, but it does not mean that the Returning Officer, to use the words of the Tribunal in *Few vs. Gibbon*, (Indian Election Cases 1935—1951, by Sen & Poddar, 66 at 72) "should take no pains at all".

20B. It was argued on behalf of the respondent that, as pointed out by the Rajasthan High Court in the case reported in A.I.R. 1963 Rajasthan 226 at 231, there is no presumption that the proposer is an elector, and the Returning Officer was not required to scrutinise the nomination paper with the presumption that the proposer is an elector. But if the proposer asserts that he is an elector in the Parliamentary Constituency to which the election relates, and has given

certain particulars on the basis of which his claim can be substantiated or disproved, it is certainly the duty of the Returning Officer to take pains to investigate that claim in the light of the particulars furnished. As the Part number and the serial number of the electoral roll at which the name of the proposer occurred in Motihari Assembly Constituency was given and it was stated that his name was entered in the electoral roll of the Parliamentary Constituency, it was certainly the duty of the Returning Officer to look into the various serial numbers 458 in Part VI of the electoral rolls of the different Assembly Constituencies which were the different segments of 3, Motihari Parliamentary Constituency.

20C. It was argued on behalf of the respondent that as there was admittedly a non-compliance with the provisions of section 33 of the Act, there was no duty cast on the Returning Officer to hold an inquiry and find out whether the proposer Mahadeo Sah was qualified. Reliance is placed in support of this submission on the decision of the Supreme Court in Brijendralal Gupta and another vs. Jwalaprasad and others (A.I.R. 1960 Supreme Court 1049). That case merely decided that where non-compliance with the provisions of section 33 of the Act is established, it is not obligatory on the Returning Officer to hold an inquiry under section 36(2) of the Act to find out whether or not respondent No. 5 was eligible to stand for the election. But in scrutinising the nomination paper in the light of the electoral roll, the Returning Officer holds no inquiry. He is merely scrutinising the nomination paper, a duty imposed upon him. Where, as in this case, the question is whether the omission of certain required particular in the nomination paper is a substantial defect, the Returning Officer is certainly entitled, and indeed bound, to look into the electoral rolls for deciding whether the defect is of a substantial character. In Karnail Singh vs. Election Tribunal, Hissar, 10 Election Law Reports 189, where the candidate himself pointed out to the Returning Officer the entry of his name in the Electoral rolls, the omission of the name of the subdivision in the nomination paper was held to be a more technical defect, and not a defect of a substantial nature. This case, therefore, shows that the Returning Officer may examine the candidate, and on a parity of reasoning the proposer, for deciding whether the defect is of a substantial nature, in Hira Singh vs. Madan Lal (A.I.R. 1968 Supreme Court 1179), it was held that in a case where there is more than one nomination paper, the Returning Officer is bound to look into the entries in all the nomination papers before holding that the defect in one nomination paper is of a substantial character.

21. The decision of the Supreme Court in Dharam Singh Rathi vs. Hari Singh, (1975) 2 Supreme Court cases 240, on which strong reliance was placed by Shri Sinha, appearing for the respondent, does not compel us to hold that the omission to mention the name of the Constituency is in the circumstances of the present case a defect of a substantial character which makes it obligatory for the Returning Officer to reject the nomination paper. In that case, one of the grounds on which the Returning Officer rejected the nomination paper of a candidate Prabha Ram was that the name of the constituency of the proposer was not given in the nomination paper and the Supreme Court held that the aforesaid defect pointed out by the Returning Officer in the nomination paper was a defect of a substantial character which made it obligatory for him to reject the nomination paper. In that case, the constituency for which the nomination paper was filed was the Assembly constituency and, therefore, the nomination paper in Form 2B did not contain the name of the Parliamentary Constituency in which the proposer was a voter. Thereafter, the names of the possible Assembly Constituencies, the electoral rolls of which the Returning Officer could look into for deciding whether the proposer was an elector were not narrowed down. Further, it appears that in the aforesaid nomination paper of Prabha Ram, the entries in the electoral rolls did not tally with the particulars mentioned by the proposer in the nomination paper. That was not a case, therefore, in which by merely looking into as few as utmost six entries in the elector rolls as in this case the Returning Officer could have checked whether or not the proposer was an elector in the constituency for which the election was being held. The decision in Dharam Singh Rathi's case cannot be regarded as

an authority for the proposition that the omission to mention the name of the Assembly constituency of the proposer in the nomination paper was a defect of substantial character in the nomination paper even in those cases in which the name of his Parliamentary constituency was correctly mentioned and the Part number of the electoral roll and the serial number in the electoral roll, at which his name was entered, were also correctly mentioned in the nomination paper, and those particulars were sufficient to enable the Returning Officer to find out that the candidate was a person whose name was entered as an elector in the constituency by merely looking into a few entries.

21A. The decisions in Sunder Lal Chechani vs. Sampat Lal (A.I.R. 1963 Rajasthan 226) and P. N. Balasubrahmanyam vs. Election Tribunal (A.I.R. 1954 Madras 730), in which also the omission to mention the name of the constituency in the nomination paper was held to be a defect of substantial character also of no avail to the respondent. In the Rajasthan case, the High Court came to the conclusion that from the particulars given in the nomination paper, the Returning Officer could not be satisfied that the candidate was an elector in some Assembly constituency, and in the Madras case, the Madras High Court proceeded on the footing that in the absence of particulars, no one could test whether the candidate was or was not duly qualified to be a candidate. In the present case, as I have held, on the basis of the particulars, the Returning Officer could without much difficulty have satisfied himself that the proposer was an elector in the Parliamentary Constituency for which he was proposing the name of Jamuna Ram as a candidate. A large number of other decisions were also cited in this connection but I do not feel it necessary to consider those decisions as the legal principles applicable are well settled by the decision of the highest court. The test for determination whether the omission to mention the name of the constituency or the particulars like the electoral roll number of the proposer in a substantial defect or not is well settled, namely, where the Returning Officer could without difficulty i.e. readily find out whether the proposer was an elector of the constituency. The decision of the question whether a particular omission or mis-description in the nomination paper is a substantial defect or not is otherwise a question of fact and it is risky to appeal to precedent on the question of fact. I, therefore, do not feel called upon to refer to the various other decisions on the point whether the defect is a substantial defect or not, which have been cited by the learned counsel for the parties.

22. In view of the conclusion of which I have arrived of it is not necessary consider the argument was also advanced on behalf of the petitioner that the defect in the nomination paper, in which Mahadeo Sah is a proposer, is a defect in regard to wrong description of the constituency, in which the proposer was a voter and is, therefore, not a defect of substantial nature and the nomination paper could not be rejected on that ground. The only other defect in the aforesaid nomination paper that has been pointed out is that the name of the Assembly constituency, in which the candidate Jamuna Ram was a voter has not been mentioned in the nomination paper. It is not disputed that the name of the Parliamentary constituency in which the petitioner is registered as a voter has been correctly mentioned as Motihari Parliamentary Constituency and the part number in which the name of the candidate and the serial number of the entry in the electoral rolls in regard to the candidate Jamuna Ram has been correctly given. In these circumstances, or the reasons given in regard to the defect regarding wrong mention of the Assembly Constituency of the proposer, the aforesaid defect in the nomination paper cannot be regarded as a defect of a substantial nature. Further, so far the candidate Jamuna Ram is concerned, his postal address was given in the nomination paper as Miricot, Main Road, Motihari. That showed that he was a resident of Motihari. This shows apparently that the Assembly Constituency of the candidate Jamuna Ram was Motihari Assembly Constituency. The Returning Officer seems to have ignored this defect and, therefore, it appears that he had no difficulty in tracing out the electoral roll number of the candidate Jamuna Ram in the electoral roll. In Rangilal's case (supra) the Supreme Court held that the omission to give the name of the

Assembly Constituency, namely, Dhanbad Assembly Constituency in the nomination paper was not a defect of a substantial character where the postal address showed that the candidate was a resident of Dhanbad and the Returning Officer did not notice the defect. For the reasons aforesaid, it must be held that the nomination paper No. 43 (Ext. 2) was improperly rejected by the Returning Officer.

23. As the nomination paper No. 43 (Ext. 2) could not have been properly rejected, the nomination of the candidate Jamuna Ram, in view of the provision of sub-section (3) of section 36 of the Act, which enjoins the Returning Officer not to reject the nomination of the candidate for the failure to comply with the provisions of section 33, if the candidate has been duly nominated by another nomination paper in respect of which no irregularity has been committed cannot be regulated. In that view of the matter, it is not of any importance to determine whether the other nomination paper No. 47 (Ext. 2/a) was or was not properly rejected. However, as an appeal lies from the order of this Court, I record my finding in regard to that also.

24. The order of the Returning Officer rejecting the nomination paper Ext. 2(a) reads thus :

"Rejected as the proposer's constituency has not been mentioned. Also the age has not been mentioned." The first defect is that the column meant for mentioning the name of the Assembly Constituency in the electoral roll of which the proposer Bishwanath Ram was a voter the name of the Assembly Constituency has not been mentioned. The name of the Parliamentary Constituency, in which that Assembly Constituency is comprised, and the Part number and the serial number of the entry, in which the name of the proposer is entered, has, however, been correctly mentioned as Motihari Parliamentary Constituency, Part VII, serial No. 9 respectively. For the reasons given in regard to the nomination paper Ext. 2, this defect, in the circumstances of the case, cannot be regarded as a substantial defect. As regards the other defect, namely, the non-mention of the age of the candidate Jamuna Ram, ordinarily, this defect would have been held to be a defect of a substantial character. In Brijendralal Gupta and another vs. Jwalaprasad and others (A.I.R. 1960 Supreme Court 1049), the Supreme Court held that the omission to declare the age in the nomination paper by a candidate was a defect of a substantial character. In the present case, however the omission to declare his age by the candidate should not be regarded as a defect of a substantial nature because the information as to age was available to the Returning Officer as at the time of the scrutiny in the other nomination paper. For determining whether this defect is substantial or not, we are not entitled to ignore the second nomination paper. In Hira Singh Pal vs. Madan Lal, reported in A.I.R. 1968 Supreme Court 1179, in the second nomination paper, the Part number and the Assembly Constituency in which the candidate was an elector was wrongly mentioned. But it was correctly mentioned in the other nomination paper. The Supreme Court held that the nomination paper could not be rejected on account of that mistake because from the first nomination paper, the Returning Officer could have easily found out the correct part of the electoral roll all the required information was before him. Similarly, in the present case, though in the nomination paper No. 47 (Ext. 2/a), the age of the candidate had not been mentioned, as in the nomination paper Ext. 2, the candidate had declared his age as 64 years the omission of the declaration regarding age could not be regarded as a defect of a substantial character as the required information as to age was before the Returning Officer. In the case reported in A.I.R. 1960 Supreme Court 1049 (supra), there was no nomination paper in which the correct age was mentioned. As pointed out in the decision reported in A.I.R. 1946 Patna 49, every judgment must be read as applicable to particular facts proved or assumed to be proved. The decision reported in AIR 1960 Supreme Court 1049 cannot, therefore, be regarded as an authority for the proposition that even if the required declaration as to age has been furnished in the other nomination paper, the Returning Officer must reject the other nomination paper of a candidate because of the omission of the declaration as to age.

I, therefore, hold that the nomination papers of Jamuna Ram Exts. 2 and 2(a) were improperly rejected. Section 100(1)(c) of the act provides that if any nomination has been improperly rejected, the High Court shall declare the election of the returned candidate to be void. The election of the returned candidate, the respondent, must, therefore, be held to be void. I, accordingly, answer both parts of Issue No. 6 in the affirmative.

Issue No. 7

25. Issue No. 7 of this election petition will be considered along with Issue No. 4 of Election Petition No. 9 of 1980.

ELECTION PETITION NO 9 OF 1980

Issue No. 1

26. It was conceded by the learned counsel for the respondent that there was no direct evidence that the election petition has been filed at the instance of Shri Rajendra Pd. Gupta or that the petitioner is a stooge of Sri Rajendra Pd. Gupta. He, however, contended that the case of the respondent that the petitioner Mahadeo Sah was a stooge of Sri Rajendra Pd. Gupta and had filed the petition at his instance is proved by circumstances. One of the circumstances on which he relied was that the defect in the nomination papers of Jamuna Ram was not due to inadvertence, rather the defect was deliberately left in the nomination papers to provide a ground for challenging the election of the respondent in case the Congress (I) candidate Shrimai Prabhawati Gupta, the wife of Sri Rajendra Pd. Gupta, lost the election. I will discuss the evidence on the point while dealing with issue No. 3, and for the reasons to be given later, I hold that the circumstance that the defects in the nomination papers were deliberately left is not established by the evidence on the record. The other circumstance relied upon is the ignorance exhibited by the election petitioner Mahadeo Sah about the impugned election and the prosecution of the election petition. Mahadeo-Sah (P.W. 1) admitted that he did not remember the name of his lawyer and also the amount of money spent in filing the election petition. He also admitted that he did not know the names of the contesting candidates other than the respondent and Prabhawati Gupta and further that he did not know the dates in which the votes were counted, and the result of the election was declared. He further stated that he did not remember if any other election petition had been filed in respect of the impugned election and that Jamuna Ram had told him that he had to be present on the date of hearing and that Jamuna Ram had brought him to Court and had told him that the election petition had handed to be filed. He further stated that Jamuna Ram had handed over the Vakalatnama to his lawyer. The witness stated that he did not know the name of the Mohalla in which he was staying at Patna at the time of his deposition. He added that he was staying at the place where Jamuna Ram was staying, that Jamuna Ram had brought him to Court and that Jamuna Ram would take him back to the place where he was staying. The deposition of Mahadeo Sah does give the impression that he is not the moving spirit behind the election petition which has been filed in his name. But there is no material on the basis of which it can be definitely held that it has been filed at the instance of Sri Rajendra Pd. Gupta. The fact that Mahadeo Sah knew Sri Rajendra Pd. Gupta or that Sri Rajendra Pd. Gupta's wife was a contesting candidate at the impugned election and that Sri Rajendra Pd. Gupta has also filed an election petition may merely excite a suspicion. They are no proof of the fact that Sri Rajendra Pd. Gupta has got the election petition filed. I may further state that the Election Petition No. 6 of 1980 was filed on 21-2-1980 and this election petition (No. 9 of 1980) was filed on 22-2-80, long before the filing of the written statement in which the plea was raised that the election petition filed by Sri Rajendra Pd. Gupta was not maintainable. The moving spirit behind the election petition seems to be Jamuna Ram, the candidate whose nomination paper was rejected because when asked whether he had consulted any body before filing the election petition, Mahadeo Sah (P.W.1) answered

that Jamuna Ram came to him and told him that election petition had to be filed. I do not accept the evidence of Jamuna Ram (P.W.3) that Mahadeo Sah (P.W.1) insisted that he would file the election petition. Further, according to Mahadeo Sah (P.W.1), the person who knew about the amount of money spent in filing the election petition was Jamuna Ram and it was Jamuna Ram who had asked him to be present on the date of hearing. It is not disputed that Mahadeo Sah is an elector of the constituency, the election to which is impugned, and is, therefore, competent to present the election petition. The election petition cannot be held to be in-competent merely because inspiration or the money for filing the election petition has been furnished not by the election petitioner himself, but by some one else. In Madan Lal Vs. Hira Singh Pal (A.I.R. 1968 Delhi, 110) which allowing the election petition, Hardyal Hardy, J. rejected the argument that the election petition by the candidate on the ground of improper rejection of his nomination paper was not maintainable as he was merely a dummy candidate for the official candidate of the Congress Party and had deliberately filed defective nomination paper and the election petition was instigated and financed by the official candidate who had been defeated. He held that even assuming the allegations to be true, there is hardly any allegation on the question of maintainability. He observed that a candidate whose nomination paper is improperly or illegally rejected "whatever be his object and whatever be his motive, he has right to call in question the election of the returned candidate, no matter who prompts or instigates him and from where he gets the money to do so". This decision was affirmed on appeal by the Supreme Court in Hira Singh Pal's case (*supra*) even though the Supreme Court held that the election petitioner was at no time a genuine candidate and was merely availing himself of the opportunity of the rejection of his nomination paper for undoing the result of the election. On a parity of reasoning the elector has the right to file an election petition "whatever be his object and whatever be his motive" and "no matter who prompts or instigates him and from where he gets the means to do so". No decision taking a contrary view has been brought to my notice. I would, therefore, answer both parts of Issue No. I in the negative.

Issue No. 3

27. According to the respondent, though given ample opportunity to give correct address in the nomination papers, neither Jamuna Ram nor his proposers availed themselves of the opportunity and, therefore, they must be held to have deliberately filed invalid nomination papers with the ulterior motive of utilising the rejection of the nomination papers as a ground for challenging the election in case Shrimati Prabhawati Gupta, the official Congress (I) candidate, lost the election. Even assuming the allegation to be proved, I do not think that the election petitioner Mahadeo Sah would be stopped from challenging the election. Section 100 of the Act provides that subject to the provisions of sub-section (2) which are not material in the present case, if the High Court is of the opinion that any nomination has been improperly rejected, the High Court shall declare the election of the returned candidate to be void. The election statute, therefore, makes it obligatory on the High Court to declare in such a case the election of the returned candidate to be void. As there is no estoppel against the statute, a person who is qualified to challenge the election petition cannot be estopped from claiming from the High Court a declaration that the election of the returned candidate is void because of the improper rejection of any nomination paper. The question whether the nomination paper was improperly rejected is a question of law and there can be no estoppel on a question of law. Section 81 of the Act confers upon every elector the right to question the validity of an election of the constituency in which he is an elector, and that right cannot be impaired by any equitable doctrine of estoppel, waiver or acquiescence. For application of the principles that there can be no estoppel against statute in election petitions decisions reported in 5 Election Law Reports 319 and 8 Election Law Reports 45. Further, even if no opportunity had been provided by the Returning Officer to the candidate or his proposers to correct or to

remove the defects, if the defect is substantial, rejection of the nomination paper will be proper and the fact that the candidate was not allowed an opportunity to rectify the omission would make no difference : See the decision in A.I.R. 1960 Supreme Court 1049 (*supra*) at page 1051. In Rangilal Choudhury's case (*supra*) also, it was observed that the omission to notice the defect and failure to give an opportunity for correction to the candidate does not mean that the defect can be ignored if it is of a substantial character. Further, if the defect in the nomination paper was not of a substantial character, it cannot be rejected even if opportunity to remove the defect was not availed of, in view of the provision of section 36 of the Act that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. The question, therefore, whether or not Bishwanath Ram and Mahadeo Sah were given ample opportunity to give correct particulars in the nomination paper and they deliberately filed invalid nomination papers for some ulterior motive is not really relevant for the purpose of this case. Since, however, an issue has been raised on that point, I propose to record my finding on that point and give my reasons for the finding very briefly.

28. There is no direct evidence that Jamuna Ram or his two proposers deliberately filed invalid nomination papers with the motive that the rejection of the nomination papers may be utilised as a ground for challenging the election in the event of Shrimati Prabhawati Gupta, the official Congress (I) candidate losing the election. The only evidence on the point is that even though the Returning Officer told Jamuna Ram, both at the time when he filed the nomination papers and at the time of the scrutiny, that his nomination papers were defective and that he should remove the defects, Jamuna Ram not only did not remove the defects, but maintained that the nomination papers were not defective. The aforesaid circumstance is not enough to prove that the proposers and candidate Jamuna Ram had deliberately filed invalid nomination papers for some ulterior motive. That circumstance is quite consistent with the genuine but foolish belief of Jamuna Ram that the nomination papers were not defective. Further, I do not think that it can safely be held on the evidence that the Returning Officer told Jamuna Ram on both the occasions that his nomination papers were defective and the defects should be removed and Jamuna Ram persisted in maintaining that the nomination papers were not defective. The Returning Officer was the person who was entitled in the first instance to decide whether or not the nomination papers were defective and he had power to reject the nomination papers. In these circumstances, it seems highly improbable that Jamuna Ram would maintain that the nomination papers were not defective and refuse to make correction even though asked by the Returning Officer to do so. This highly improbable story can be accepted only when the evidence in its support is such that is of cogent and unimpeachable character. The witnesses who deposed to the aforesaid story are, besides the respondent Kamla Misra Madhukar (R.W. 1), Satya Narain Pd. Nirala (R.W. 2), Narayan Kishore (R.W. 3), both of whom were proposers of the nomination papers of the respondent. Surendra Kumar (R.W. 4), Ram Nath Pd. Sah (R.W. 5) and Bishwanath Ram (R.W. 6). The respondent (R.W. 1) deposed that both when Jamuna Ram had filed the nomination papers and also at the time of the scrutiny, the Returning Officer had told Jamuna Ram that the nomination papers were defective and that he should remove the defects and that Jamuna Ram did not do so and maintained on both the occasions that they were not defective. R.W. 2, R.W. 3 and R.W. 5 support the story told by R.W. 1 in so far as it relates to the occasion of scrutiny of the nomination papers, while R.W. 4 supports the story of R.W. 1 in so far as it relates the occasion of filing the nomination papers by Jamuna Ram is concerned. On the other hand, Mahadeo Sah (P.W. 1) deposed that after Jamuna Ram filed the nomination papers, the officer said that that is right, please go away. Jamuna Ram (P.W. 3) deposed to the same effect. Rai Kishore Pd. Singh (P.W. 4), another candidate, who had filed the nomination paper, deposed substantially to the same effect saying that the Returning Officer saw the nomination papers of Jamuna Ram at the time the same were filed and kept the same saying that they were alright. He further deposed that the Returning

Officer did not tell Jamuna Ram before rejecting the nomination papers that the nomination papers had not been correctly filled up. Thakur Ramapati Singh (P.W. 2), who admitted was also a candidate at the aforesaid election, deposed that the Returning Officer had looked into the nomination papers of Jamuna Ram when he had filed the same and that before rejecting the nomination papers of Jamuna Ram, the Returning Officer did not tell Jamuna Ram about any defect in the nomination papers and did not even ask him to explain those defects. It is true that P.Ws. 2 and 4 must also be regarded as witnesses who had grievance against the respondent as they had been defeated at the election and P.W. 4 may be regarded as interested witness because he was elected to the Legislative Assembly with the support of the Congress (I) party, whose candidate, Shrimati Prabhawati Gupta was defeated at the election and was virtually a dummy candidate for Shrimati Prabhawati Gupta. But if P.Ws. are partisan, so are the R.Ws. As I have already said, R.Ws. 2 and 3 were proposers of R.W. 1, the respondent. R.W. 5 admitted that he had worked for the respondent in the election. Bishwanath Ram (R.W. 6) ultimately admitted in cross-examination that his Party the Lok Dal, had alliance with the Communist Party and they had supported Shri Kamla Mishra Madhukar for election to the House of People and that they were supporting Sri Kamla Mishra Madhukar in the election. Further, I do not at all believe R.W. 1 when he states that on 10th December, 1979, he was present in the chambers of the Returning Officer when Jamuna Ram had filed his nomination papers. He had admittedly filed four nomination papers on 7th December, 1979. He admitted that he knew that one candidate cannot file more than four nomination papers. It is, therefore, highly improbable that he would go to file nomination papers beyond four nomination papers already filed on 7th December, 1979. Though in this case he deposed that he had gone to file nomination papers on two days, namely, 7th December, 1979 and 10th December, 1979, in Election Petition No. 6 admittedly he did not depose that he had gone to file nomination papers on two days. In my opinion, his evidence that he had gone to file nomination papers on 10th December, 1979 cannot be accepted. His evidence is, therefore, very unreliable. I do not believe R.W. 4 because he also maintained that Kamla Mishra Madhukar filed his nomination papers on 10th December, 1979. Though he claimed that he was an editor of a journal published in 1980, he admitted that no card in his capacity as a journalist had been issued to him. Further, it is well settled that at the time of the scrutiny, the Returning Officer had no jurisdiction to permit rectification of any defect in the nomination paper. See the decisions reported in A.I.R. 1954 Supreme Court 510 and A.I.R. 1970 Supreme Court 110. The evidence

that at the time of scrutiny the Returning Officer asked Jamuna Ram to remove the defects is, therefore, highly improbable. In the circumstances, I would, therefore, prefer the testimony of the witnesses examined on behalf of the petitioner that the Returning Officer did not point out any defect in the nomination papers at the time of its presentation or at the time of scrutiny. I would, accordingly, answer both parts of Issue No. 3 in the negative.

Issue No. 2

29. For the reasons already given by me in the Election Petition No. 6 of 1980, both parts of issue No. 2 must be answered in the affirmative.

Issue No. 7 of Election Petition No. 6 of 1980 and Issue No. 4 of Election Petition No. 9 of 1980

30. Upon the findings that the nomination papers of Sri Jamuna Ram was improperly rejected and the election of the sole respondent is void and the other findings in the case, the petitioners of both the cases are entitled to a declaration that the election of the sole respondent is void. As the election petitions have been strenuously contested. I see no justification for not awarding costs of the petition to both the petitioners. Both the petitioners are, therefore, are also entitled to costs. Hearing fee one set in both the petitions Rs. 1000 payable to the two petitioners half and half. The petitioners are not entitled to any other relief. These issues are, accordingly, answered.

31. In the result, both the election petitions are allowed with costs and it is declared that the election of the sole respondent Kamla Mishra Madhukar to the Lok Sabha from 3 Motihari Lok Sabha Constituency held in 1980 is void. Let the substance of this decision be communicated to the Election Commission and the Speaker of the Lok Sabha immediately.

Patna High Court,

The 25th May, 1984.

SHIVANUGRAH NARAIN, Presiding Officer

[No. 82/BR-HP (6 & 9)/80]84]

By order,

S. R. SETHI, Under Secy.
Election Commission of India

